



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN-01-214-52657

Office: Nebraska Service Center

Date:

FEB 10 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record fails to indicate the nature of the petitioner's business, the number of employees or the gross or net income. The petitioner seeks to employ the beneficiary as an administration manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a statement from the petitioner's managing partner.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had not submitted a description of duties for the proffered position. The director further found that as the nature of the position had not been described, it could not be determined whether the beneficiary qualifies for the proffered position. On appeal, the petitioner's managing partner submits a description of the beneficiary's duties.

The additional information submitted on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. The petitioner describes the duties of the offered position, in part, as follows:

(a) [The beneficiary] will prepare weekly employee's productivity reports as well as inventory reports...

(b) In addition, [the beneficiary] will maintain an on-going, adjustable administration/reporting plan in order

to streamline all administrative services for the purpose of cost reduction, quality assurance and productivity...

(c) [The beneficiary] will also create and develop visual presentation for the Department of Operations, create various Bills of Lading for export shipments, oversee various documentation requiring Bulgarian translation, and relating to international shipment of goods and services overseas [sic]...

We requested [the beneficiary] to be approved...mainly because of her experience in education. Since our operation will be involved with Bulgarian language documentation, we require a person that will have a degree in English, knowledge and education from Bulgaria...

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with the petitioner's argument that the proffered position would normally require a bachelor's degree in a specific specialty. The proffered position appears similar to the positions of a secretary and an administrative assistant. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 422-423, the Department of Labor (DOL) describes the positions of secretaries and administrative assistants, in part, as follows:

Office automation and organizational restructuring have led secretaries and administrative assistants to assume a wider range of new responsibilities once reserved for managerial and professional staff. Many secretaries and administrative assistants . . . conduct research on the Internet, and operate and troubleshoot new office technologies. In the midst of these changes, however, their core responsibilities have remained much the same, although changed from manual to electronic--performing and coordinating an office's administrative activities, storing[,] retrieving, and integrating information for dissemination to staff and clients.

A review of the DOL's Handbook finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a secretary or an administrative assistant. High school graduates with basic office skills may qualify for entry-level administrative assistant positions. Training ranges from high school vocational education programs to 1 and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

In addition, the petitioner has not established that the beneficiary's bilingual duties are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the English and Bulgarian languages or a less extensive education, is necessary for the successful completion of its duties.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.